

## Remarks

Applicants respectfully request reconsideration of the present U.S. Patent application as amended herein. Claims 1, 6, 11, 16, 19 and 20 have been amended. No claims have been added or canceled. Thus, claims 1-29 are pending.

### CLAIM REJECTIONS - 35 U.S.C. § 103(a)

Claims 1-29 were rejected as being unpatentable over U.S. Patent No. 6,385,647 issued to Willis, et al. (*Willis*) in view of U.S. Patent No. 5,784,622 issued to Kalwitz, et al. (*Kalwitz*). For at least the reasons set forth below Applicants submit that Willis and Kalwitz do not render claims 1-29 obvious.

Specifically, the Final Office Action states:

Applicant on page 10, line 5, argues that Kalwitz does not disclose retransmission of data not received by the network peripheral device. Examiner's replay; Kalwitz in Fig 11, step 324 LSL provides a data group corresponding to the frame packet types. Examiner's Interpretation: in Fig. 11, first protocol SPX step 326, second protocol TCP step 336. If a Protocol is Unix compatible would not be received by first protocol SPX are the target electronic systems. System be transmitting using second protocol that is TCP.

See page 2.

Applicants respectfully disagree with these characterizations in the Final Office Action. While Applicants agree that Fig. 11 of *Kalwitz* discloses two transmission protocols, these transmission protocols are not used for retransmission purposes or even for transmitting the same data to different recipient devices. *Kalwitz* discloses:

In the multiprotocol environment illustrated in FIG. 11, PRESCAN module 339 determines the frame packet type being used by each operating system by repeating the steps shown in FIG. 10 for each of the operating system protocols (see section 4e above).

See col. 30, lines 50-54. Thus, the PRESCAN module determines the protocol to be used for a *single transmission* to a printer.

The Final Office Action further states:

Applicant on Page 10, lines 15-21 argues that Willis discloses transmission from multiple servers to a single network device using multiple protocol. Examiner's reply: Willis in col 15 teaches multiprotocol using IPSec, SSI, or SHTTP etc.

See page 2.

Applicants further disagree with the characterizations of the Final Office Action regarding earlier arguments. Specifically, with respect to *Willis*, Applicants argued:

*Willis* discloses multicasting of multimedia information. See Abstract. *Willis* further discloses determining whether transmission was unsuccessful. See col. 4, lines 36-38. Specifically, *Willis* discloses retransmission via *multicasting* in response to an error status. See col. 4, lines 39-42 (emphasis added). Thus, *Willis* discloses transmission using a first protocol (multicast) and retransmission using the same protocol. Therefore, *Willis* explicitly *teaches away* from the invention as claimed in claims 1, 6 and 11.

See Response to first Office Action. That is, *Willis* discloses transmission using a multicast protocol and retransmission using the same multicast protocol.

The Final Office Action further states:

The motivation to combine Kalwitz into Willis in order to improve the functionality of Willis in order to improve the functionality of Willis invention in fig. 1 using multiprotocol environment operation in multi operating system protocols.

See page 2.

Something in the prior art must suggest the desirability, and thus the obviousness, of making the combination proposed in an Office Action. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434, 1438 (CAFC 1988). Although an Office Action may suggest that an element of a primary prior art reference *could* be modified in

view of a secondary prior art reference to form the claimed structure, the mere fact that the prior art *could* be so modified would not make the modification obvious unless the prior art suggested the desirability of the modification (emphasis added). In re Laskowski, 871 F.2d 115, 10 USPQ2d 1297 (CAFC 1989). There must be some supporting teaching in the prior art for the proposed combination of references to be proper. In re Newell, 891 F.2d 899, 13 USPQ2d 1248 (CAFC 1989). No such teaching or suggestion has been provided for combining the cited references to result in the claimed invention.

While Applicants submit that the Final Office Action provides no motivation in either *Kalwitz* or *Willis* for the combination set forth, even if *Kalwitz* and *Willis* are combined the result is not the claimed invention. The MPEP (e.g., § 706.02(j)) and applicable case law require that the Office Action establish a combination of references that teach or suggest all of the claim limitations. Because *Kalwitz* discloses transmission from different devices using different protocols and *Willis* discloses transmission and retransmission using the same protocol, nothing in the combination of *Klavitz* and *Willis* can teach or suggest transmitting data using a first protocol, determining data not received using the first protocol and then requesting transmission of the data not received via a second protocol. Therefore, no combination of *Klavitz* and *Willis* can teach or suggest the claimed invention.

#### CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1-29 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by

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Examiner Kianersi, Mitra  
TC/A.U. 2143

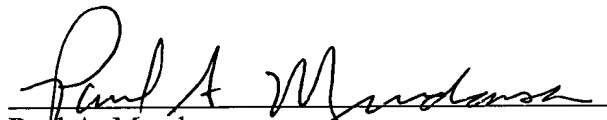
telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number  
02-2666.

Respectfully submitted,  
**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP**

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